

Jeremy R. Schulze, OSB #160528  
Betts, Patterson & Mines, P.S.  
701 Pike Street, Suite 1400  
Seattle, WA 98101-3927  
Telephone: 206-292-9988  
Facsimile: 206-343-7053

Attorneys for Defendant Preferred  
Contractors Insurance Company

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

NAVIGATORS INSURANCE COMPANY,  
a New York corporation;

Plaintiff,

vs.

MITCHELL CONSTRUCTION SERVICES  
LLC., an Oregon limited liability company;  
and WESTTOWN ON 8TH LLC, an Oregon  
limited liability company; and PREFERRED  
CONTRACTORS INSURANCE  
COMPANY, RRG;

Defendants.

NO. 6:19-cv-00528-MC

DEFENDANT PREFERRED  
CONTRACTORS INSURANCE  
COMPANY'S ANSWER TO  
PLAINTIFF'S COMPLAINT FOR  
DECLARATORY RELIEF

Defendant Preferred Contractors Insurance Company ("PCIC") submits its answer, to the Complaint of plaintiff Navigators Insurance Company ("Navigators"), as follows:

**I. PARTIES**

1. PCIC lacks information and belief as to the allegations in paragraph 1 and therefore denies them.

2. Answering the allegations in paragraph 2 of the complaint, PCIC responds that on information and belief, Mitchell is a dissolved limited liability company. PCIC lacks

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PLAINTIFF'S COMPLAINT

information and belief with respect to the remaining allegations in paragraph 2 of the complaint, and therefore denies them.

3. PCIC lacks information and belief with respect to the allegations in paragraph 3 of the complaint and therefore denies them.

4. Answering the allegations in paragraph 4 of the complaint, PCIC admits that it is organized under the laws of Montana with a home office in Billings, Montana but denies the remaining allegations in paragraph 4.

## **II. VENUE AND JURISDICTION**

5. PCIC admits that the amount in controversy exceeds \$75,000 but denies the remaining allegations in paragraph 5 based on lack of information and belief.

6. PCIC admits the allegations in paragraph 6 of the complaint.

## **III. FACTS**

### **A. The Underlying Lawsuit**

7. PCIC incorporates by reference its previous responses.

8. Admitted

9. PCIC lacks information and belief with respect to the allegations in paragraph 9 of the complaint and therefore denies them.

10. PCIC lacks information and belief with respect to the allegations in paragraph 10 of the complaint and therefore denies them.

11. PCIC lacks information and belief with respect to the allegations in paragraph 11 of the complaint and therefore denies them.

12. PCIC lacks information and belief with respect to the allegations in paragraph 12 of the complaint and therefore denies them.

13. PCIC lacks information and belief with respect to the allegations in paragraph 13 of the complaint and therefore denies them.

14. Admitted.

15. Admitted.

16. Admitted.

17. PCIC lacks information and belief with respect to the allegations in paragraph 17 of the complaint and therefore denies them.

18. PCIC lacks information and belief with respect to the allegations in paragraph 18 of the complaint and therefore denies them.

19. PCIC lacks information and belief with respect to the allegations in paragraph 19 of the complaint and therefore denies them.

20. PCIC lacks information and belief with respect to the allegations in paragraph 20 of the complaint and therefore denies them.

21. PCIC lacks information and belief with respect to the allegations in paragraph 21 of the complaint and therefore denies them.

**C. [sic] The Policies Issued by Navigators to Mitchell**

22. Answering paragraphs 22 through 40 inclusive, PCIC denies the allegations in paragraphs 22 through 40 based on lack of information and belief.

**D. Tenders to Navigators and PCIC**

41. PCIC lacks information and belief with respect to the allegations in paragraph 41 of the complaint and therefore denies them.

42. PCIC lacks information and belief with respect to the allegations in paragraph 42 of the complaint and therefore denies them.

43. PCIC lacks information and belief with respect to the allegations in paragraph 43 of the complaint and therefore denies them.

44. PCIC lacks information and belief with respect to the allegations in paragraph 44 of the complaint and therefore denies them.

45. PCIC lacks information and belief with respect to the allegations in paragraph 45 of the complaint and therefore denies them.

46. Denied.

47. Admit that PCIC denied coverage for the claim on or about August 15, 2018 but deny the remaining allegations in paragraph 47.

48. Admit that Mitchell tendered to PCIC on or about October 12, 2018.

49. Denied.

**IV. THERE IS AN ACTUAL AND JUSTICIABLE CONTROVERSY AS TO NAVIGATORS COVERAGE OBLIGATIONS**

50. PCIC incorporates by reference its previous responses.

51. Answering paragraphs 51 through 97 inclusive, PCIC denies the allegations in paragraphs 51 through 97 based on lack of information and belief.

**V. FIRST CAUSE OF ACTION – DECLARATORY RELIEF  
(Against Mitchell)**

98. PCIC incorporates by reference its previous responses.

99. Answering paragraphs 99 through 102 inclusive, PCIC denies the allegations in paragraphs 99 through 102 based on lack of information and belief.

**VI. SECOND CAUSE OF ACTION – DECLARATORY RELIEF  
(Against Preferred Contractors)**

103. PCIC incorporates by reference its previous responses.

104. Answering paragraph 104, PCIC denies that Mitchell is entitled to coverage under the PCIC policies or that Mitchell has controverted PCIC's coverage position.

105. Denied.

106. Denied.

**VII. REQUEST FOR RELIEF**

1. PCIC denies plaintiff is entitled to the relief it seeks.

2. Any allegation in plaintiff's Complaint not specifically addressed is hereby denied.

## **VIII. AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

Insufficiency of service of process.

### **SECOND AFFIRMATIVE DEFENSE**

Coverage is barred because no bodily injury or property damage is alleged to have first manifested and appeared during a PCIC policy period.

### **THIRD AFFIRMATIVE DEFENSE**

Coverage may be barred by the insured contract exclusion.

### **FOURTH AFFIRMATIVE DEFENSE**

Coverage may be barred by the exclusions for damaged to the insured's work or to property being worked on by the insured.

### **FIFTH AFFIRMATIVE DEFENSE**

Coverage may be barred by the independent contractors or subcontractors exclusion.

### **SIXTH AFFIRMATIVE DEFENSE**

Coverage is barred by the exclusion for projects where the named insured has not reported a change as required by Section VII(J) of the policy.

### **SEVENTH AFFIRMATIVE DEFENSE**

Coverage is barred by condition VII (J) of the policy requiring that all material matters in the application and any supplements or addendum remain true, correct, and complete throughout the entire Policy period.

### **EIGHTH AFFIRMATIVE DEFENSE**

Coverage may be barred by the subcontractor condition endorsement.

### **NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be barred by the application of any insurance conditions or similar provisions in the policies.

**IX. PRAYER FOR RELIEF**

WHEREFORE, PCIC prays for judgment as follows:

1. Dismissing plaintiff's Complaint against PCIC with prejudice;
2. Awarding PCIC its costs and expenses, including reasonable attorneys' fees, incurred in defense of this action; and
3. Awarding to PCIC such other and further relief as the Court may deem just and proper.

DATED this 14th day of May, 2019.

BETTS, PATTERSON & MINES, P.S.

By /s/ Jeremy R. Schulze  
Jeremy R. Schulze, OSB#160528  
Betts, Patterson & Mines, P.S.  
One Convention Place, Suite 1400  
701 Pike Street  
Seattle WA 98101-3927  
Telephone: (206) 292-9988  
Facsimile: (206) 343-7053  
E-mail: jschulze@bpmlaw.com

Attorneys for Defendant Preferred  
Contractors Insurance Company

### **CERTIFICATE OF SERVICE**

I, Jeremy R. Schulze, hereby certify that on May 14, 2019, I electronically filed the following:

- **Defendant Preferred Contractors Insurance Company's Answer To Plaintiff's Complaint For Declaratory Relief; and**
- **Certificate of Service;**

with the Court using the CM/ECF system which will send notification of such filing to the following:

***Counsel for Plaintiff:***

Thomas Lether  
Eric Neal  
Lether & Associates, PLLC  
1848 Westlake Avenue North, Suite 100  
Seattle, WA 98019  
tlether@letherlaw.com  
eneal@letherlaw.com

***Counsel for Defendant Westtown:***

Kevin S. Mapes  
Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland OR 97204  
kmapes@balljanik.com

Dated this 14th day of May, 2019.

BETTS, PATTERSON & MINES, P.S.

By /s/ Jeremy R. Schulze

Jeremy R. Schulze, OSB#160528  
Betts, Patterson & Mines, P.S.  
One Convention Place, Suite 1400  
701 Pike Street  
Seattle WA 98101-3927  
Telephone: (206) 292-9988  
Facsimile: (206) 343-7053  
E-mail: jschulze@bpmlaw.com  
Attorneys for Defendant Preferred  
Contractors Insurance Company